



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

October 12, 2011

Nicholas W. van Aelstyn
Beveridge & Diamond, PC
456 Montgomery Street, Suite 1800
San Francisco, CA 94104

RE: Yosemite Creek Site, San Francisco, California

Dear Mr. van Aelstyn:

The Environmental Protection Agency ("EPA") received your letter dated September 30, 2011 regarding the Yosemite Creek Site ("Site"). We are pleased to see that the group of potentially responsible parties ("PRP Group") which you represent is interested in taking a proactive role at the Site and that proceeding toward a Non Time Critical Removal Action ("NTCRA") is an acceptable approach. We also recognize that you have had little time to re-organize the PRP Group and that your members may need additional time and information before they will be able to make any commitments regarding performance of the response action.

We have considered your proposal for moving forward with the Engineering Evaluation / Cost Analysis ("EE/CA") and a phased approach. For two reasons, EPA is not willing to negotiate an agreement with the PRP Group to prepare the EE/CA. One, the Agency believes that negotiating an enforceable agreement limited to performing the EE/CA, as described in your letter, would be time intensive and delay Site progress. Two, the PRP Group is still re-organizing, dealing with allocation issues, and approaching potential new group members. It may be beneficial for the PRP Group if it has more time to work out these issues.

Although we are not prepared to negotiate an agreement to allow the PRP Group to prepare the EE/CA, EPA wishes to share key work activities and coordinate and collaborate on the development of the EE/CA so that that is protective of human health and the environment, cost-effective, and expeditious. EPA would like to assemble a Technical Steering Committee and invite the PRP Group's participation in developing the scope and objectives for the EE/CA. Other interested parties will also be invited to participate on the committee including the California Regional Water Quality Control Board, the Department of Toxic Substances Control ("DTSC"), the City of San Francisco, the Navy, California State Parks Department, San Francisco Bay Conservation and Development Commission ("BCDC"), and appropriate natural resource trustees (e.g. California Fish and Game, United States Fish and Wildlife Service, and the National Oceanic Atmospheric Administration).

The following presents EPA's recommended path forward. Your September 30, 2011 letter offered seven technical activities for the first phase in the NTCRA process and discussed other site specific issues. We will address these activities in the order that they appear in your letter.

1. The PRP Group's suggested activities for a Phase One NTCRA:

a. Focused ecological and human health risk assessments.

EPA believes that sufficient information already exists for EPA to conduct a streamlined risk evaluation in accordance with NTCRA guidance. The NTCRA guidance states the streamlined risk evaluations can help justify taking a removal action and identify what current or potential exposures should be prevented. The NTCRA guidance also states that risk evaluation should remain the responsibility of the EPA. EPA is currently evaluating the applicability of remediation goals described for the Navy's Parcel F at the Hunter's Point Naval Shipyard Site.

b. Focused geotechnical investigation tailored to the needs of remedy options in the EE/CA.

EPA believes that such a study performed by the PRP group will add value to the EE/CA and/or the removal action design process. We recommend that the Technical Steering Committee develop a reasonable scope and data quality objectives for such a study.

c. A source control investigation.

EPA believes that the Yosemite Slough should be protected from all sources of contaminants that may adversely impact current and future anticipated beneficial uses of the slough. The Agency is interested in any information the PRP Group may have on any property or source that may constitute a threat to the slough. EPA believes that all governmental agencies with jurisdiction within the Yosemite Creek watershed have an interest in source control and such source control should be conducted throughout the watershed. EPA's Superfund Division, Water Division, and Brownfields programs will commence discussions with the California Regional Water Quality Control Board, DTSC, and the City of San Francisco to develop a coordinated strategy to identify and remediate sources that may present a threat to the slough's beneficial uses.

d. Sediment dewatering treatability testing.

EPA recommends that the Technical Steering Committee assess this proposal further as it may be useful during the remedial design phase. EPA suggests that the Technical Steering Committee first consider collecting existing sediment dewatering information from projects around the San Francisco Bay Area (e.g. Alameda Seaplane Lagoon, Moffett Field Site 25 and 27, Emeryville Crescent, Stege Slough Habitat, and Hunters Point Naval Shipyard). After collection and evaluation of this data set, the Technical Steering Committee can then decide if site specific sediment dewatering is needed. If the committee determines that treatability testing is warranted, EPA agrees that the PRP Group could develop and implement such a plan in coordination with EPA and the Technical Steering Committee.

e. Discrete sediment characterization.

Without further explanation it is difficult for EPA to respond to this proposal. However, EPA believes that EPA's Yosemite Creek Sediment Removal Assessment Report, dated May 2011, provides sufficient density and scope of the primary COCs to support an EE/CA. We see no characterization data gaps at this time and we believe that scoping the EE/CA can commence. If the PRP Group wishes to collect limited sediment characterization tests as part of a removal design data collection process, EPA is willing to consider this approach with the Technical Steering Committee's review and recommendation.

f. Sediment toxicology analysis.

As discussed above in item 1.a., EPA sees no technical justification to conduct a sediment toxicology analysis as it is not consistent with the NRCRA streamlined risk evaluation requirements.

g. Authorship of the EE/CA report.

EPA believes it should retain authorship of the EE/CA report. As stated above, EPA believes that the best EE/CA report will be developed through a fully collaborative Technical Steering Committee effort. In addition, pursuant to the NTCRA guidance, EPA is required to develop and issue a Community Involvement Plan prior to issuance of the EE/CA. EPA is best suited to engage with the residential and commercial community surrounding Yosemite Slough on the incremental technical decisions made as the EE/CA is developed. In addition, per the National Contingency Plan ("NCP"), an EE/CA is subject to a formal public comment period and requires implementation of a community relations plan. See, 40 C.F.R. § 300.415(n)(3) and (4). With EPA as the EE/CA author, we will be best suited to guide the EE/CA document through public involvement and comment requirements.

2. Cleanup Levels. As stated above, EPA believes that sufficient information already exists to develop removal action objectives and cleanup levels for the EE/CA in accordance with NTCRA guidance. Due to a wealth of ecological and human health risk assessment information at adjacent Hunter's Point Naval Shipyard, conducting risk assessment and sediment toxicology studies at Yosemite Slough do not appear necessary or required and would likely significantly delay the EE/CA process without substantive contribution to the technical quality.

3. Site Boundary. A site is defined as the areal extent of contamination or where the contamination has come to be located. See, 40 C.F.R. § 300.5. Although EPA previously defined the Yosemite Slough boundary at the mouth of the Slough, that decision was not finalized and should be re-evaluated. The Technical Steering Committee will review the existing data for the Yosemite Slough, the Yosemite Slough mouth and the Navy's Parcel F. The scope of the Yosemite Slough EE/CA will be determined by EPA and based upon the Comprehensive

Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601, et seq., the NCP and available data.

4. **AOC.** EPA does not believe an Administrative Order on Consent (“AOC”) is necessary at this time. Based on the collaborative Technical Steering Committee approach described in this letter, negotiation of an AOC for the EE/CA only is not required. Although the schedule for the EE/CA will be discussed within the Technical Steering Committee, EPA anticipates finalization of the EE/CA and Action Memo by Fall 2012. By summer 2012, EPA will be looking to engage the PRP Group and other potentially responsible parties in negotiations regarding the design and implementation of the final NTCRA Memorandum.

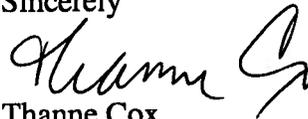
5. **Other PRPs.** Although CERCLA is a strict liability statute, the Agency does endeavor to reach a fair resolution of parties’ liability based upon the circumstances of the case. In keeping with this practice, EPA will endeavor to take actions which will lead to a fair resolution of liability at the Site which may include facilitating increased participation by other PRPs and stakeholders.

6. **Confidential, Non-Binding Allocation Process.** As stated above, EPA endeavors to reach a fair resolution of liability at sites. At this Site, EPA encourages the PRPs to reach an agreement on allocation issues without the Agency’s involvement but will facilitate the process to the extent practicable.

EPA would like to meet with the PRP Group on October 20 or 21, 2011 to discuss the formation of an EE/CA Technical Steering Committee. We consider your participation valuable and necessary in the NTCRA process and encourage your participation. The discussion will focus on technical issues and a process to develop the EE/CA. If the PRP Group wants to engage in this discussion, we will provide a more detailed agenda. Please let me know at your earliest convenience if you want to participate in this meeting and whether the October 20 or 21 date would be amenable.

Thank you for your attention in this matter.

Sincerely



Thanne Cox
Assistant Regional Counsel

cc: Craig Cooper, EPA
Melinda Garvey, EPA